

APRIL 26 1994

ORAL COMMENTS TO THE STATE WATER RESOURCES CONTROL BOARD REGARDING EPA'S PROPOSED WATER QUALITY STANDARDS FOR THE BAY DELTA: APRIL 26, 1994: 1416 9TH STREET, SACRAMENTO, CALIFORNIA: 10:00 A.M.

Mr. John Caffrey, Chairman, Board Members, and Staff  
State Water Resources Control Board

Ladies and Gentlemen:

In the approximately twenty (20) minutes that we are given to make these oral comments:

We announce that they are made on behalf of numerous public agency and water supply agencies in the Sacramento Valley and Northern San Joaquin Valley including Byron-Bethany Irrigation District, Clear Creek Community Services District, Cordua Irrigation District, El Camino Irrigation District, Biggs-West Gridley Water District, Butte Water District, Sutter Extension Water District, Richvale Irrigation District, Nevada Irrigation District, Oakdale Irrigation District, Oroville-Wyandotte Irrigation District, San Joaquin River Exchange Contractors Water Authority, South San Joaquin Irrigation District, Western Canal Water District, and Tri-Dam Authority.

The proposed rules to be adopted by the Environmental Protection Agency, are economically short-sighted. It is clear, pursuant to the section in the rules entitled "Summary of Costs and Benefits" that "the implementation plan for federal proposals has not yet been developed, making it difficult to project the actual levels of economic impacts; . . ." The EPA proposals estimate that the cost of implementation could be \$40 million for the agricultural sector and \$25 million for the urban sector, assuming "cost effective" and "flexible" implementation.

The Environmental Protection Agency greatly underestimates the economic impacts of its proposed rules. Even using a crude measure of economic impact, the market value of the additional water required for these set of rules, demonstrate the absurdly low nature of a \$40 million conclusion. Despite EPA'S recitation of a portion of Governor Wilson's comment on April 6, 1992 in which he stated that "the Delta is broken," (see Federal Register, at Volume 59, No. 4, page 814), EPA neglected to state that on April 1, 1993, Governor Pete Wilson of the State of California asked then acting chairman of the State Water Resources Control Board, Mr. John Caffrey, the following:

"The National Marine Fisheries Service and the U.S. Fish and Wildlife Service, acting under the virtually unlimited powers of the Endangered Species Act, have set limitations on the operations of the Central Valley Project and the State Water Project. At the Board's Workshop on March 22, 1993, federal

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government officials said that federal standards would build on the proposed D-1630, but might also go far further. Federal officials stated that anywhere from one to three million additional acre-feet beyond flows prescribed by D-1630 could be required by ESA to protect the Delta Smelt.

"So imprecise a statement gives rise to great suspicion as to the quality of the science being employed. Moreover, it is the ESA which permits the federal government to pre-empt the State in the allocation of water resources. The U.S. Supreme Court's interpretation of the Act makes clear that it is a blunt instrument that can be used to achieve a judicious balancing of the needs of endangered species and of California's endangered economy. Instead it has been interpreted as demanding that the needs of endangered species be pursued absolutely without regard for any other consideration.

"In light of these events, I believe the wisest course is for the Board to turn now to the effort of establishing *permanent* standards for the protection of the Delta.

"It is my strong intention to return control of California's water allocation process to the State and to your Board. I believe the Board can provide a needed forum for resolving scientific questions and unresolved jurisdictional issues.

"Regrettably, despite the diligent efforts of the Board, additional action by the State to provide interim standards at this juncture would serve only to increase the regulatory confusion surrounding this issue. What is paramount is that the State proceed to identify a permanent standard and a permanent solution for the Delta, which will permit all of California's major water user groups - urban, agricultural and environmental - to enjoy assurances of adequate water resources well into the 21st century."

"Sincerely, Pete Wilson."

(Letter of California Governor Pete Wilson dated April 1, 1993 to Acting Chairman of the State Water Resources Control Board, Mr. John Caffrey.)

The State Water Resources Control Board is the proper jurisdictional forum for resolving scientific questions raised by the proposed EPA water quality regulations, such as the use of large amounts of fresh water to repel salinity in the Bay. The federal government is attempting to use its regulatory authority to cause a "de facto" reallocation of California water rights in violation of provisions set forth in the Clean Water Act, and particularly at section 101(g). EPA admits (see Federal Register at Vol. 59, No. 4, at page 821) that the State Board has full discretion to determine the source of water flows; however, EPA ignores the State Board's authority in California through the proposed rules by proposing salinity criteria to restore estuary habitat conditions that existed prior to 1976, in fact, as far back as the late 60's and early 70's. EPA is wrongfully attempting to invade the jurisdiction of the State Water Resources Control Board in allocating and maintaining water rights in the State of California.

As Governor Wilson stated to then acting chairman, John Caffrey, in his letter of April 1, 1993, he desired to return control of California's water allocation process to the state and to the State Water Resources Control Board. For that reason, the State Board was proceeding to develop an Environmental Impact Report, investigation and a study to determine the environmental effects and impacts of implementation of proposed D-1630 and proposed permanent long-term goals in deference to the interim goals which Governor Wilson thought unnecessary due to the federal government's implementation and in effect "wielding as a club" the Endangered Species Act to take water from farmers to benefit fish habitat and fish. In fact, Governor Wilson's April 1, 1993 letter references the March 22, 1993 State Water Board Workshop which commenced with a joint presentation by the U.S. Fish & Wildlife Service, National Marine Fisheries Service, and the California Department of Fish and Game (something similar to "Club Fed" that was formed following Governor Wilson's letter of April 1, 1993). At that meeting, NMFS testified that California's water system could be manipulated to increase fish species by putting more water through the system by using Section 7 ESA consultations with other public agencies and the development and implementation of Biological Opinions. The statement was made by representatives of the U.S. Fish and Wildlife Service that the listing of the Delta Smelt would definitely require 2 parts per thousand TDS at Chipps Island in the summer months of June, July and August, and that failure to cooperate by remaining beneficial users of water in this State would result in more onerous enforcement by the custodians of the Endangered Species Act. In fact, ladies and gentlemen, that 2 parts per thousand translates to 1.5 million to 3 million acre-feet of additional water depending upon the water year, which is in the range of the fresh water supply impacts that the State Board estimates will be removed from California's water system in another critically dry year by EPA's adoption of their standards and subsequent implementation by the State.

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We understand that the State Water Resources Control Board estimates fresh water supply impacts resulting from the adoption of the proposed rules over the average 70-year hydrological cycle would be 930,000 acre-feet; 1.6 million acre-feet in a critical year; and 3.1 million acre-feet in a critically dry year. EPA's estimates of fresh water supply impacts caused by the adoption of their proposals are significantly less - in fact, 2 million acre-feet less than the State Board's estimates in a critically dry year. (See Draft Regulatory Impact Assessment of Proposed Water Quality Standards Developed December 15, 1993, at page S-4.) EPA admits in the RIA at page S-10 that the impacts on small farm entities (defined as less than \$500,000 in sales annually) and the alternatives to regulating the small farmer were not fully analyzed. EPA and certainly the State Water Resources Control Board (if they choose to adopt these draconian regulations) should know the economic and environmental impacts on small farmers before it adopts and enforces the regulations? We believe that the impacts of the EPA regulations could put small farmers in California out of business, change land uses, and otherwise damage permanently what is readily acknowledged as not only this nation's but the world's 4th or 5th largest agriculturally producing economy.

We ask for a continuation of the State Board's intent to develop long-term goals complete with environmental review as requested by Governor Wilson. Thank you for the opportunity to present these comments.

WILLIAM H. BABER, III  
in behalf of MINASIAN, *et al.*

WHB:aw